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I. EPA lacks authority to regulate fossil fuel-fired electric generating units (EGUs) under Section 111(d) of the Clean Air Act

As a threshold matter, EPA lacks the authority necessary to regulate existing fossil fuel-fired electric generating units (affected EGUs) under Section 111(d) of the Clean Air Act.

A. EPA has not promulgated requisite performance standards under Section 111(b) for new sources

Even if EPA possesses the authority to regulate CO_2 emissions from existing EGUs under Section 111(d), any such regulation is premature at this time. Pursuant to the language of the Act, EPA cannot regulate existing sources under Section 111(d) unless and until it regulates new sources under Section 111(b). See 42 U.S.C. § 7411(d)(1)(A)(ii). Though EPA has proposed CO_2 regulations for new EGUs under Section 111(b), it has not yet adopted them. Consequently, this Rule proposal is premature. Even if EPA adopts the proposed regulations for new EGUs pursuant to Section 111(b), those regulations are vulnerable to legal challenge and may be invalidated, in which case any rules regulating CO_2 from existing sources under Section 111(d) would automatically be invalidated.

II. EPA impermissibly interpreted Section 111 of the Act

EPA lacks the authority to interpret implementing statutes contrary to the clear meaning of the statutory text. If the statutory text is ambiguous, EPA is still limited to reasonable interpretations that "stay[] within the bounds of its statutory authority." Utility Air Regulatory Grp. v. E.P.A., 134 S. Ct. 2427, 2439 (2014). The Rule includes numerous interpretations of the Act that are contrary to the statutory text and Congressional intent and, therefore, are impermissible.

A. EPA impermissibly interpreted "best system of emission reduction" (BSER)

When EPA determines the best system for emission reduction (BSER) for a designated source category under Section 111, EPA is confined to considering emission-reducing actions that can take place at the regulated source. EPA's assertion that BSER means "anything that reduces the emissions of affected sources," 79 Fed. Reg. 34885 (emphasis added) is incorrect. EPA relied on its expansive and unsupported interpretation as the basis for considering "outside the fence" approaches (blocks 2, 3, and 4) to reducing emissions when it determined the BSER for existing EGUs. EPA's consideration of "outside the fence" actions to reduce emissions was impermissible and, consequently, the Rule's BSER is invalid.

Congress did not intend to give EPA unfettered discretion to regulate all areas of the economy that indirectly affect CO_2 emission from EGUs. Section 111(d) instructs EPA to set performance standards for "existing sources" of certain "air pollutants," it did not give EPA authority to set standards for dispatch based on fuel-type, renewable energy (RE) generation, and demand-side consumption.

EPA improperly relied on the "interconnectedness" of the electricity system when it determined the BSER for affected EGUs. All industries and markets are interconnected in the sense that they are influenced by a variety of outside forces, such as market demand and competing industries. However, Congress selected a discrete regulatory tool in Section 111(d), which focuses solely on sources of pollution, not the myriad of outside forces that led those sources to be constructed and utilized in the first place.

EPA's approach to regulating "outside the fence" is contrary to the Supreme Court's recent decision in UARG, supra, 134 S. Ct. at 2444, in which the Court rejected an EPA interpretation of the Clean Air Act because it "would bring about an enormous and transformative expansion in EPA's regulatory authority without clear congressional authorization." The Court explained that, "[w]hen an agency claims to discover in a long-extant statute an unheralded power to regulate a significant portion of the American economy, we typically greet it with a measure of skepticism." Ibid. Further, the Court "expect[s] Congress to speak clearly if it wishes to assign to an agency decisions of vast economic and political significance." Ibid.

As it stands, EPA's Rule ignores the Court's guidance and instead stakes out unbounded authority to regulate "anything that reduces the emissions of affected sources[.]" 79 Fed. Reg. 34885. Historically, EPA has recognized its limited regulatory authority under Section 111 and has restricted its performance standards to emission rates that can be achieved by making changes at the regulated source. See generally 40 C.F.R. Part 60. EPA must revise the Rule and set the BSER for EGUs within the bounds of Congress's intent to regulate only affected source categories.

The unlawfulness of EPA's approach can also be seen by looking ahead to what would happen if New Jersey submitted a plan that EPA found to be unsatisfactory. In that case, EPA would prescribe its own plan for New Jersey. See 42 U.S.C. § 7411(d)(2)(A). New Jersey's 2030 emissions goal is set at 531 lbs CO_2/MWh, which is technically impossible to meet by regulating affected EGUs alone. Thus, the plan prescribed by EPA would have to regulate "outside the fence" and impose binding requirements on other sources not regulated under Section 111(d) in order to meet New Jersey's 2030 goal. EPA, however, has no statutory authority to regulate those other sources, and so it would not be possible for EPA to prescribe a lawful state plan that would achieve the 2030 goal. As the language of Section 111(d) makes clear, standards of performance apply to a "source category," in this case affected EGUs. Performance standards do not and cannot apply to entities not within the source category of affected EGUs, yet EPA's proposal would require application to other sources, or else it would be impossible for New Jersey to meet the 2030 goal established by EPA.

B. EPA's "alternative approach" to BSER also reflects an impermissible interpretation

EPA's proposed "alternative approach" for the BSER, under which affected EGUs would be required to reduce their mass emissions by the amount achievable if building blocks 2, 3, and 4 were applied is also inappropriate. 79 Fed Reg. 34852. EPA lacks the statutory authority to force these affected EGUs to shut down or operate for fewer hours so that natural gas, RE sources, or demand side efficiency improvements can fill that void. Moreover, this "alternative" reflects a distinction without a difference. The alternative approach imposes the same requirements and leaves states with the same options it had under the first building-block approach. It is an alternative approach in name only, not in substance. At its core, the

alternative approach is just an attempt by EPA to disguise its impermissible "outside the fence" interpretation of BSER.

C. EPA improperly set binding emission targets

EPA's proposal also violates the procedural requirements of the Act. Section 111(d) provides that EPA's regulatory role is to establish a procedure which states can follow to submit a plan that establishes standards of performance. As Section 111(d) states, "[t]he Administrator shall prescribe regulations which shall establish a procedure similar to that provided by section 7410 of this title under which each State shall submit to the Administrator a plan which establishes standards of performance for any existing source for any air pollutant." 42 U.S.C. § 7411(d)(1)(A) (emphasis added).

Thus, it is clear that Congress intended for States to establish the "standards of performance" for source categories under Section 111(d) and EPA's role is limited to establishing a procedure by which States can accomplish that task. EPA's proposal exceeds its statutory authorization, as it sets standards of performance through binding emissions targets that are imposed on States, rather than setting forth a procedure by which a state such as New Jersey can propose its own standard of performance.

This dichotomy can best be seen by comparing the statutory language of Section 111(d) with the language of 111(b). Whereas Section 111(d) explicitly provides that each State will establish "standards of performance," by contrast Section 111(b) provides that "the Administrator shall publish proposed regulations, establishing Federal standards of performance . . . ." 42 U.S.C. § 7411(b)(1)(B). It is clear then from the language of Section 111(b) that Congress intended for EPA to establish standards of performance for new sources, and used statutory language to that effect. It is equally clear, however, that in Section 111(d) Congress explicitly gave States, and not EPA, the authority to set standards of performance for existing sources. Also, the plain language of Section 111(d) provides that performance standards are confined to regulating an existing source of an air pollutant. Since renewable energy, energy efficiency and nuclear power do not emit CO_2, they are not sources of this air pollutant and, therefore, these sources cannot be regulated under Section 111(d) by EPA.

EPA simply does not have the statutory authority to establish "standards of performance" for existing sources under Section 111(d) of the Act. EPA's attempt to exceed its delegated authority to establish procedures by, instead, establishing standards of performance in the form of binding emission targets upsets the cooperative federalism model that is at the heart of the Act and thereby undermines not only the statutory text, but also Congressional intent.

III. Arbitrary and capricious findings

Many of EPA's findings, assumptions, and determinations in the Clean Power Plan constitute invalid agency action. The Clean Air Act and the Administrative Procedure Act prohibit agency actions that are arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law. 42 U.S.C. 7607(d)(9)(A); 5 U.S.C. 706. While agencies retain substantial discretion in their decision-making process, all decisions must have a "rational connection between the facts found and the choice made." Motor Vehicle

Mfr. Ass'n v. State Farm Mut. Auto Ins. Co., 463 U.S. 29, 43 (1983). When an agency fails to "examine the relevant data and articulate a satisfactory explanation for its action" such action must be set aside. Ibid.

For the reasons discussed below, numerous aspects of the Rule constitute invalid agency action. These deficiencies are fatal to the entire Rule. In the alternative, at a minimum, each unsupported finding, assumption, or determination must be eliminated from the final Rule. Without waiving any objection in the first instance that EPA lacks the requisite statutory authority for this particular agency action, the arbitrary and capricious provisions promulgated by EPA are addressed below.

A. EPA arbitrarily used different definitions of BSER in its performance standards for EGUs

EPA's decision to look "outside the fence" to determine the BSER for existing EGUs was arbitrary and capricious in light of EPA's earlier determinations of the BSER for new, modified, and reconstructed EGUs.

In its proposed performance standards for new, modified, and reconstructed EGUs, EPA assessed the demonstrated technological systems and operating practices that led to cost-effective emission reductions from the source category. This approach led EPA to determine the BSER for new coal plants is partial Carbon Capture and Sequestration and, for new natural gas plants, Combined Cycle generation. Similarly, for modified and reconstructed sources, EPA proposed requirements that pertained solely to the source, including best operating practices, equipment upgrades, and more efficient technologies such as combined cycle turbines.[1]

By contrast, in determining the BSER for existing EGUs under this Rule proposal, EPA looked "outside the fence" of the affected source category and considered unrelated factors, such as: unused NGCC capacity (block 2), RE growth potential (block 3), unconstructed nuclear reactors (block 3), and states' ability to reduce consumer demand (block 4). EPA justified its approach by emphasizing the "interconnected nature of the electricity system." However, EPA failed to explain why it made no mention of its concern for the interconnected electricity system when it determined the BSER for new, modified, and reconstructed EGUs. EPA adhered to its jurisdictional limitations in the previous rule but, inexplicably, did not do so here.

One consequence of EPA's "outside the fence" approach to BSER is that, under the Rule, New Jersey's target emission rate for existing EGUs is significantly more stringent than EPA's emission rate for new EGUs. New Jersey is directed by EPA to achieve an emission rate of 531 lbs/MWh by 2030 for its existing EGUs, while new sources nationwide must meet only an 1,000-1,100 lbs/MWh emission rate, depending on the fuel source and type of unit. It is implicit in Section 111 that performance standards for existing sources must be less stringent than standards for new sources, particularly in light of Section 111(d)'s mandate that the Administrator allow states to consider "the remaining useful life of the existing source[.]" This provision was clearly intended to justify a less stringent standard or more time for compliance for existing sources, not, as is the outcome under the proposed Rule, a more stringent standard for existing sources.

[1] EPA's performance standard for modified and reconstructed EGUs also includes source-specific requirements regarding: startup, shutdown, and malfunction; continuous monitoring; emissions performance testing; continuous compliance; and, notification, recordkeeping, and reporting requirements.

In short, EPA failed to articulate a satisfactory explanation for its novel and unauthorized "outside the fence" approach to BSER for existing EGUs. The standard approach EPA took in determining the BSER for new, modified, and reconstructed plants reveals that EGUs are not so categorically different from other source categories that an "outside the fence" approach is necessary, let alone permitted.

B. EPA arbitrarily determined the BSER building blocks

In addition to the flaws discussed above, EPA was also arbitrary in determining the requirements within each of its building blocks. The standards selected by EPA in the BSER building blocks have not been "adequately demonstrated," as required by Section 111. Moreover, EPA made numerous determinations that lack a "rational connection between the facts found and the choice made." Motor Vehicle Mfr. Ass'n, supra, 463 U.S. at 43 (1983).

i. Block 1

EPA's determination that emissions from every affected coal-fired EGU within a state can be reduced by six percent is arbitrary and capricious. EPA arrived at this target by considering the potential heat rate improvements from adoption of best practices to reduce heat rate variability, as well as reductions available by implementing equipment upgrades. To support its determination, EPA relied on a lone 2009 study by Sargent & Lundy as well as inferences derived from hourly data from 900 coal-fired EGUs. Critically, EPA's approach failed to adequately account for variations between individual sources. When it set the six percent emission reduction target, EPA failed to incorporate its own acknowledgment that "individual EGUs would only be able to implement the best practices or upgrades that were applicable to their specific designs or fuel types and that had not already been implemented." 79 Fed. Reg. 34859.

As a result of EPA's uniform approach, every source within every state is presumed to be capable of achieving EPA's six percent reduction target. This approach fails to consider whether an individual source has already adopted best practices and made equipment upgrades. In fact, sources that already adopted such measures will be penalized for their initiative, as they will be expected to reduce their emissions by an additional six percent after having already exhausted what EPA considers to be the most cost-effective measures for on-site emission reductions. This aspect of the proposed Rule therefore has the perverse effect of penalizing affected EGUs, like those in New Jersey, that have already taken significant steps to limit their CO_2 emissions.

This inequitable outcome is a direct result of EPA's decision under building block 1 to select a uniform percentage target for reducing emissions, rather than a uniform emission rate. EPA has proven it can adopt a BSER that does not penalize existing low-emitting sources. For example, pursuant to 40 C.F.R. 60.31(d), existing sulfuric acid production units must not emit more than 0.25 grams of sulfuric acid mist per kilogram of sulfuric acid produced. Sulfuric acid production units that were already achieving that emission rate when the rule was adopted were not expected to achieve additional emission reductions.

In sum, EPA's emission reduction target for coal-fired EGUs is arbitrary and capricious because it 1) relies on insufficient data to determine what emission reduction opportunities have been adequately

demonstrated, and 2) it fails to justify setting a uniform percent-reduction target and account for the hardship that would be placed on units that already achieved efficiency improvements.

ii. Block 2

EPA's determination that existing NGCC units can and should assume the electric generation role of existing coal and oil units and are capable of sustaining 70 percent utilization rates was arbitrary and capricious. New Jersey anticipates that, in order to achieve its target emission rate, the state's remaining coal-fired EGUs would need to be shut down. EPA's assessment of the BSER, as applied to New Jersey, fails to adequately account for the substantial reliability risks created by overdependence on any particular fuel source. Furthermore, natural gas is historically subject to both price and supply volatility and EPA's mandated dispatch rates have the impermissible effect of imposing potentially unreliable electricity supply and unjustifiably high energy costs upon ratepayers.

In addition, building block 2 of EPA's BSER impermissibly uses the emission rate from a sub-set of the source category (NGCC plants) to drive the performance standard for the entire source category (fossil fuel-fired EGUs). By calculating each state's target emission rate for affected EGUs with the assumption that NGCC plants would achieve a 70% utilization rate, EPA is effectively creating an arbitrary performance standard for coal and other non-NGCC EGUs. EPA could have followed the approach it took in its proposed NSPS for fossil fuel-fired EGUs, in which it set discrete performance standards for affected EGUs based on their fuel source. Instead, the proposed Rule for existing plants effectively requires non-NGCC plants to convert to NGCC in order to achieve the emission rate assumed under block 2. EPA, however, is prohibited from setting a performance standard that would require certain sources within the category to redesign and change the "fundamental scope" of their facility in order to comply with the standard. Cf. Sierra Club v. Envtl. Prot. Agency 499 F. 3d 653, 655 (7th Cir. 2007) (discussing EPA's limited options when setting the "best available control technology" under New Source Review). Furthermore, even a 100% switch from existing coal units to existing NGCC units would not achieve the 531 lbs/MWh goal for New Jersey because NGCC units operate at approximately 900 lbs/MWh.

iii. Block 3 – Renewable Energy (RE)

EPA used an arbitrary and unjustifiable methodology for determining each state's renewable energy (RE) generating capacity under block 3 of the BSER. EPA failed to offer an adequate justification for two components of the RE targets in the BSER: 1) its determination that the average regional RPS reflects an adequately demonstrated and feasible system of emission reduction; and 2) its application of a uniform RE growth rate to all states within a region, regardless of their baseline RE generation capacity. Consequently, EPA failed to prove that the standards in block 3 of its BSER have been adequately demonstrated.

RPSs are not an inherently accurate reflection of a system of emission reduction that is demonstrated or feasible. While some RPSs may realistically reflect a state's RE growth potential, others may be no more than an aspirational goal that does not account for the costs or practicalities of achieving the goal. Moreover, in two of EPA's designated regions there was only one state with an RPS. In those states, the lone state with a RPS set the RE growth rate for the entire region.

Applying a uniform growth rate to states within a region also has the perverse effect of penalizing states that have made the most significant early investments in RE. While the growth rate EPA applies to each state within a given region is uniform, that growth rate is applied to drastically different baseline RE generation capacities. As a result, states that have the highest baseline RE generation capacity within their region are expected to increase their RE generation capacity the most in absolute MWh. For example, New Jersey, Delaware, and Maryland are all located in the East Central Region, which has a 17% growth rate. Under EPA's approach, New Jersey is expected to increase its RE generation by 8,866,751 MWh, while Maryland will only have to increase its generation by 5,083,917 MWh. Delaware has an even lower target of 907,300 MWh. New Jersey's high target is a direct consequence of its early investments in RE, which led it to have a higher baseline of RE capacity.

In short, EPA expects the most from the states that have already done the most, and expects the least from the states that have done the least.[2] EPA failed to justify this approach, especially in light of the fact that states with the highest baseline of RE capacity are likely to have exhausted many of the low-cost options for development of RE generation. This aspect of the proposed Rule therefore has the perverse effect of penalizing those states like New Jersey that took early action on greenhouse gas emissions by investing in and developing RE resources and setting ambitious targets for the use of RE. EPA's failure to take those early actions into account, and failure to justify these inequitable outcomes is arbitrary and capricious.

Additionally, EPA did not sufficiently address the circumstance in which renewable energy generated in one state is financed by and/or consumed in another state. The ability to purchase the credit for out-of-state renewable energy generation is important given the environmental limitations on the potential for renewable energy generation across states. For a multitude of reasons, the development of renewable energy is more cost-effective in some states than others, and the ability to purchase the credit from out-of-state avoids significant costs to ratepayers. EPA also did not adequately address the issue of increased demand or competition for such out-of-state credits, which will affect availability and price of those credits, nor has EPA adequately addressed the issue of double-counting, wherein both the home state of the renewable resource and the out-of-state purchaser of the renewable energy certificate will be seeking credit for the same emission-free energy.

iv. Block 4

EPA's determination that all states are capable of achieving a 1.5 percent savings rate in energy consumption is also arbitrary and capricious. EPA acknowledged it selected this target without "assum[ing] any particular type of demand-side energy efficiency policy." 79 Fed. Reg. 34872. Rather, EPA noted a multitude of possible efficiency measures as well as the fact that twelve states have achieved, or have established requirements that will lead them to achieve 1.5 percent savings rates.

[2] The contrast is starkest between EPA's assumptions for Texas and Alaska. In 2012, Texas's RE capacity was 34,016,697 MWh while Alaska's RE capacity was only 39,958 MWh. Yet, under the Rule, Texas is expected to increase its RE generation capacity by an additional 51,945,805 MWh, while Alaska is expected to increase its capacity by a mere 123,131 MWh.

EPA's approach fails to consider that a state's aggregate demand for electricity is the sum total of countless market forces, including, in large part, the choices made by individual households and businesses, which EPA has no authority to regulate. EPA's cost-analysis of energy efficiency policies also fails to discuss the opportunity cost of restricting the state's energy consumption. For example, states that are subject to an annual savings rate will have a decreased supply of energy which will likely increase the cost per unit of energy. Ultimately, a reduced energy budget could inhibit energy-intensive industries from investing in states, thereby depriving the state of tax revenue and residents of job opportunities. EPA's uniform savings rate also ignores the vast differences in per-capita energy consumption rates between states. New Jersey already has a low per-capita consumption rate yet, without explanation, EPA expects it to improve its efficiency at the same rate as less efficient states. Also, New Jersey's electricity costs are already high, and incremental, additional improvement in energy efficiency must be considered in light of its impact on the cost of electricity. Once again, this aspect of the proposed Rule has the perverse effect of penalizing those States like New Jersey that have already improved demand-side energy efficiency. EPA's approach under block 4 is therefore arbitrary and capricious.

C. The building blocks exceed EPA's authority

EPA's rules must respect the existing regulatory authority of the Federal Energy Regulatory Commission (FERC), the North American Electric Reliability Corporation (NERC), regional transmission organizations such as PJM, and state public utility commissions. EPA currently does not regulate dispatch of NGCC plants, renewable energy, and energy efficiency; these are areas that are regulated by FERC and the state public utility commissions. It is important that if a state chooses to include increased dispatch of NGCC plants, renewable energy, or energy efficiency in its compliance plan under 111(d), the jurisdiction over these activities remains with FERC and the state utility commissions. The jurisdictional issues raised by this proposal are particularly concerning. Enforceability by EPA is problematic, as it may usurp the authority of FERC and state public utility commissions over these activities. In addition, state public utility commissions have many years of experience overseeing energy efficiency and renewable energy programs. EPA's oversight could lead to unintended consequences in terms of costs and reliability issues.

IV. Miscellaneous arguments

A. EPA's proposal contains procedural flaws

This Rule proposal is more appropriately denoted as a pre-proposal given the many uncertainties identified by the proposal itself and the roughly 200 instances in which EPA requested comments on its proposed approach. Given that deficiency, the Rule proposal does not comply with the requirements of the APA. EPA should—as it did with standards for new EGUs under section 111(b)—issue a new proposal with more specificity so that commenters can actually understand the intricacies of the proposed Rule, which are impossible to glean from the current proposal. Additionally, if the proposed Rule is adopted as is, it will not only be violative of the Administrative Procedure Act, but also void for vagueness under the Due Process Clause of the Fifth Amendment. See, e.g., Fed. Cmmc'ns Comm'n v. Fox Television Stations, 132 S. Ct. 2307 (2012). Of particular concern, EPA does not propose a clear method to determine compliance with the proposed goals, which is necessary to understand the proposal and a basic component of any performance standard.

B. The preamble to the Rule impermissibly interprets the Rule

EPA's preamble and its interpretation of "affected entity" in the preamble to the Rule is also invalid. The proposed Rule instructs that state plans must achieve the "identified performance level . . . in Table I . . . for affected entities in [each] state." 79 Fed. Reg. at 34951 (emphasis added). "Affected entities," in turn, is defined as "[a]n affected EGU, or another entity with obligations under this subpart for the purpose of meeting the emissions performance goal requirements in these emission guidelines." Nuclear plants play a critical role in displacing carbon-intensive energy sources, thereby assisting states in "meeting the[ir] emissions performance goal." Therefore, nuclear plants fit squarely within the definition of "affected entity." As an "affected entity," by the terms of the Rule, states can rely on nuclear plants to achieve their "identified performance level . . . in Table I."

However, EPA's preamble attempts to re-interpret the proposed Rule in a manner inconsistent with the clear text of the proposed Rule, which is impermissible. See Christensen v. Harris Cnty., 529 U.S. 576, 588 (2000). Specifically, the preamble attempts to artificially limit the definition of "affected entity" from an "entity with obligations . . . for . . . meeting the emissions performance goal requirements[,]" to one in which EPA limits what entities states can use to meet their emission guidelines, such as only allowing 6% of generation from nuclear plants to be included. This limiting construction is contrary to the broad definition of "affected entity" in the proposed Rule and is therefore impermissible.

C. EPA failed to address the Rule's impact on permitting fees

EPA did not address the potential impact of the Clean Power Plan on permitting fees as they relate to CO_2 emissions. EPA previously indicated that its proposed rulemaking for CO_2 emissions from new sources under section 111(b) did not trigger the emissions fee requirement for CO_2 because in that case EPA is not actually proposing to regulate emissions of CO_2, but rather emissions of greenhouse gases. In this case, the proposed Rule states that CO_2 is being regulated. EPA must address the impact of regulating CO2 in this proposal on air permit fees under Section 502 of the Act. See 42 U.S.C. 7661a(b)(3)(B).

D. EPA impermissibly designated its BSER building blocks as severable

EPA's assertion that the Rule's BSER building blocks are severable, such that in the event a court were to invalidate one of the building blocks the BSER would consist of the remaining building blocks, is incorrect. The Rule's State Rate-Based CO_2 Emission Performance Goals, located at Table 1 to Subpart UUUU of Part 60, contains discrete emission rates at the interim and final phase of the Rule's compliance period. EPA's contention that revised state goals could be computed after the fact by using the Goal Computation Technical Support Document and the enormous preamble is unworkable and, moreover, demonstrative of the challenges associated with EPA's impermissible outside the fence approach. The Rule simply does not permit EPA's proposed severability approach.

E. EGUs are already regulated under Section 112

Under the plain language of Section 111(d), as set forth in the U.S. Code, EGUs are exempt from regulation under Section 111(d) because they are already regulated under Section 112. Section 111(d) provides that EPA may only promulgate regulations thereunder for an air pollutant that "is not . . . emitted from a source category which is regulated under" Section 112 of the Act. 42 U.S.C. § 7411(d)(1)(A)(i). Because air pollutants from EGUs are regulated under Section 112 of the Act, EPA lacks authority to regulate air pollutants from EGUs, including CO_2, under section 111(d) of the Act.